

**REMARKS**

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

On September 17, 2009 Applicants representatives conducted a telephone interview the Examiner and an Inventor, Joel Wolf. The claims and the outstanding Office Action were discussed, however no agreement was reached.

It should be noted that Applicants are not conceding in this application that those claims amended or cancelled in this application are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of this application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to or cancellation of any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the claim.

**Rejections under 35 U.S.C. § 101**

Claims 12-22 stand rejected under 35 U.S.C. § 101. Applicants have amended claim 12 to more clearly recite statutory subject matter. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

**Claim Rejections under 35 U.S.C. § 103**

Claims 1, 12 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Hayes (U.S. Patent Pub. No. 2002/0198923, hereinafter “Hayes”). Claims 3 and 14 stand rejected under § 103(a) as being unpatentable over Hayes in view of Xu, *A Duality Approach to Admission and Scheduling Controls of Queues*, 1994 (hereinafter “Xu”). Claims 4-7, 10-11, 15-18 and 21-22 stand rejected under § 103(a) as being unpatentable over Hayes in view of Kiran, *Games, Critical Paths and Assignment Problems in Permutation Flow Shops and Cyclic Scheduling Flow Line Environments*, 1992 (hereinafter “Kiran”). Claims 2, 8-9, 13, and 19-20 stand rejected under § 103(a) as being unpatentable over Hayes in view of Crawford et al. (U.S. Patent No. 6,456,996, hereinafter “Crawford”). Applicants respectfully request reconsideration and withdrawal of these rejections.

Applicants respectfully reiterate that the Hayes clearly falls short of teaching or suggesting all the claimed limitations. Hayes teaches a dynamic load-balancing scheme that tries to prevent servers performing dynamic client requests from being overloaded in a network-connected environment. The instant invention, in contrast, assumes the tasks are known in advance, and so is static, and moreover employs a completely general objective function (typically phrased in terms of profit) and thus works in any environment.

Applicants have amended the claims herein solely in an effort to facilitate expeditious prosecution of this application. Claim 1 now recites, *inter alia*:

deciding whether or not *a request for change* should be done *with respect to maximizing a profit value expressed as a value of performing the plurality of requests for change minus a value of associated costs*, wherein *a request for change* comprises a set of tasks interrelated by temporal and location-specific dependencies; for each *request for change* to be done, assigning individual tasks within each *request for change* to acceptable servers; for each *request for change* to be done, assigning a start time to said individual tasks; wherein the set of tasks comprises hardware changes and/or software changes; wherein the change window describes a period of time during which *a request for change* is to be done; and wherein precedence constraints among tasks within *a request for change* are enforced.

Claim 1 (emphasis added). The remaining independent claims contain similar limitations. Support for these amendments can be found throughout the specification, particularly at p. 9, lines 4-15. Applicants respectfully submit that Hayes, *inter alia*, fails to teach or suggest the above quoted claim language.

Applicants respectfully submit that nothing in the remaining art of record, including Xu, Kiran and Crawford, considered either alone or in combination with Hayes, accounts for the deficiencies of Hayes briefly noted above. Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections under § 103.

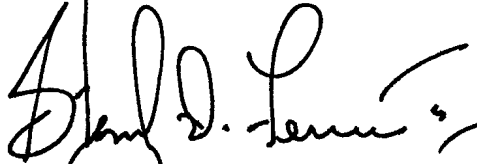
#### **Newly Presented Claims**

Applicants have presented new claims 24 and 25 herein. Support for these claims is found throughout the specification, particularly at pp. 9-11 of the original specification.

**Conclusion**

In view of the foregoing, it is respectfully submitted that the claims are in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, *the Examiner is invited to contact the undersigned at the telephone number listed below.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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